

 KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

West's Tennessee Code Annotated

Title 40. Criminal Procedure

Chapter 39. Offender Registration and Monitoring

**Part 2. Tennessee Sexual Offender and Violent Sexual Offender Registration, Verification and Tracking
Act of 2004 (Refs & Annos)**

T. C. A. § 40-39-202

§ 40-39-202. Definitions

Effective: May 22, 2019
[Currentness](#)

As used in this part, unless the context otherwise requires:

(1) "Conviction" means a judgment entered by a Tennessee court upon a plea of guilty, a plea of nolo contendere, a finding of guilt by a jury or the court notwithstanding any pending appeal or habeas corpus proceeding arising from the judgment. "Conviction" includes, but is not limited to, a conviction by a federal court or military tribunal, including a court-martial conducted by the armed forces of the United States, and a conviction, whether upon a plea of guilty, a plea of nolo contendere or a finding of guilt by a jury or the court in any other state of the United States, other jurisdiction or other country. A conviction, whether upon a plea of guilty, a plea of nolo contendere or a finding of guilt by a jury or the court for an offense committed in another jurisdiction that would be classified as a sexual offense or a violent sexual offense if committed in this state shall be considered a conviction for the purposes of this part. An adjudication in another state for a delinquent act committed in another jurisdiction that would be classified as a violent juvenile sexual offense under this section, if committed in this state, shall be considered a violent juvenile sexual offense for the purposes of this part. "Convictions," for the purposes of this part, also include a plea taken in conjunction with [§ 40-35-313](#) or its equivalent in any other jurisdiction. "Conviction" also includes a juvenile delinquency adjudication for a violent juvenile sexual offense if the offense occurs on or after July 1, 2011;

(2) "Designated law enforcement agency" means any law enforcement agency that has jurisdiction over the primary or secondary residence, place of physical presence, place of employment, school or institution of higher education where the student is enrolled or, for offenders on supervised probation or parole, the department of correction or court ordered probation officer;

(3) "Employed or practices a vocation" means any full-time or part-time employment in the state, with or without compensation, or employment that involves counseling, coaching, teaching, supervising, volunteering or working with minors in any way, regardless of the period of employment, whether the employment is financially compensated, volunteered or performed for the purpose of any government or education benefit;

(4) "Institution of higher education" means a public or private:

(A) Community college;

- (B) College;
 - (C) University; or
 - (D) Independent postsecondary institution;
- (5) "Law enforcement agency of any institution of higher education" means any campus law enforcement arrangement authorized by [§ 49-7-118](#);
- (6) "Local law enforcement agency" means:
- (A) Within the territory of a municipality, the municipal police department;
 - (B) Within the territory of a county having a metropolitan form of government, the metropolitan police department; or
 - (C) Within the unincorporated territory of a county, the sheriff's office;
- (7) "Minor" means any person under eighteen (18) years of age;
- (8) "Month" means a calendar month;
- (9) "Offender" means sexual offender, violent sexual offender and violent juvenile sexual offender, unless otherwise designated. An offender who qualifies both as a sexual offender and a violent sexual offender or as a violent juvenile sexual offender and as a violent sexual offender shall be considered a violent sexual offender;
- (10) "Offender against children" means any sexual offender, violent sexual offender or violent juvenile sexual offender if the victim in one (1) or more of the offender's crimes was a child of twelve (12) years of age or less;
- (11) "Parent" means any biological parent, adoptive parent or step-parent, and includes any legal or court-appointed guardian or custodian; however, "parent" shall not include step-parent if the offender's victim was a minor less than thirteen (13) years of age;
- (12) "Primary residence" means a place where the person abides, lodges, resides or establishes any other living accommodations in this state for five (5) consecutive days;
- (13) "Register" means the initial registration of an offender, or the re-registration of an offender after deletion or termination from the SOR;

(14) “Registering agency” means a sheriff’s office, municipal police department, metropolitan police department, campus law enforcement agency, the Tennessee department of correction, a private contractor with the Tennessee department of correction or the board;

(15) “Relevant information deemed necessary to protect the public” means that information set forth in § 40-39-206(d)(1)-(15);

(16) “Report” means appearance before the proper designated law enforcement agency for any of the purposes set out in this part;

(17) “Resident” means any person who abides, lodges, resides or establishes any other living accommodations in this state, including establishing a physical presence in this state;

(18) “Secondary residence” means a place where the person abides, lodges, resides or establishes any other living accommodations in this state for a period of fourteen (14) or more days in the aggregate during any calendar year and that is not the person's primary residence; for a person whose primary residence is not in this state, a place where the person is employed, practices a vocation or is enrolled as a student for a period of fourteen (14) or more days in the aggregate during any calendar year; or a place where the person routinely abides, lodges or resides for a period of four (4) or more consecutive or nonconsecutive days in any month and that is not the person's primary residence, including any out-of-state address;

(19) “Sexual offender” means a person who has been convicted in this state of committing a sexual offense or has another qualifying conviction;

(20) “Sexual offense” means:

(A) The commission of any act that, on or after November 1, 1989, constitutes the criminal offense of:

(i) Sexual battery, under § 39-13-505;

(ii) Statutory rape, under § 39-13-506, if the defendant has one (1) or more prior convictions for mitigated statutory rape under § 39-13-506(a), statutory rape under § 39-13-506(b) or aggravated statutory rape under § 39-13-506(c), or if the judge orders the person to register as a sexual offender pursuant to § 39-13-506(d);

(iii) Aggravated prostitution, under § 39-13-516, provided the offense occurred prior to July 1, 2010;

(iv) Sexual exploitation of a minor, under § 39-17-1003;

(v) False imprisonment where the victim is a minor, under § 39-13-302, except when committed by a parent of the minor;

(vi) Kidnapping, where the victim is a minor, under § 39-13-303, except when committed by a parent of the minor;

- (vii) Indecent exposure, under [§ 39-13-511](#), upon a third or subsequent conviction;
- (viii) Solicitation of a minor, under [§ 39-13-528](#) when the offense is classified as a Class D felony, Class E felony or a misdemeanor;
- (ix) Spousal sexual battery, for those committing the offense prior to June 18, 2005, under former § 39-13-507 [repealed];
- (x) Attempt, under [§ 39-12-101](#), to commit any of the offenses enumerated in this subdivision (20)(A);
- (xi) Solicitation, under [§ 39-12-102](#), to commit any of the offenses enumerated in this subdivision (20)(A);
- (xii) Conspiracy, under [§ 39-12-103](#), to commit any of the offenses enumerated in this subdivision (20)(A);
- (xiii) Criminal responsibility, under [§ 39-11-402\(2\)](#), to commit any of the offenses enumerated in this subdivision (20)(A);
- (xiv) Facilitating the commission, under [§ 39-11-403](#), to commit any of the offenses enumerated in this subdivision (20)(A);
- (xv) Being an accessory after the fact, under [§ 39-11-411](#), to commit any of the offenses enumerated in this subdivision (20)(A);
- (xvi) Aggravated statutory rape, under [§ 39-13-506\(c\)](#);
- (xvii) Soliciting sexual exploitation of a minor--exploitation of a minor by electronic means, under [§ 39-13-529](#);
- (xviii) Promotion of prostitution, under [§ 39-13-515](#);
- (xix) Patronizing prostitution where the victim is a minor, under [§ 39-13-514](#);
- (xx) Observation without consent, under [§ 39-13-607](#), upon a third or subsequent conviction;
- (xxi) Observation without consent, under [§ 39-13-607](#) when the offense is classified as a Class E felony;
- (xxii) Unlawful photographing under [§ 39-13-605](#) when the offense is classified as a Class E or Class D felony;
- (xxiii) Sexual contact with inmates, under [§ 39-16-408](#);

(xxiv) Unlawful photographing, under § 39-13-605, when convicted as a misdemeanor if the judge orders the person to register as a sexual offender pursuant to § 39-13-605; or

(xxv) Aggravated unlawful photography, under § 39-13-611.

(B) The commission of any act, that prior to November 1, 1989, constituted the criminal offense of:

(i) Sexual battery, under § 39-2-607 [repealed];

(ii) Statutory rape, under § 39-2-605 [repealed], only if the facts of the conviction satisfy the definition of aggravated statutory rape;

(iii) Assault with intent to commit rape or attempt to commit sexual battery, under § 39-2-608 [repealed];

(iv) Incest, under § 39-4-306 [repealed];

(v) Use of a minor for obscene purposes, under § 39-6-1137 [repealed];

(vi) Promotion of performance including sexual conduct by a minor, under § 39-6-1138 [repealed];

(vii) Criminal sexual conduct in the first degree, under § 39-3703 [repealed];

(viii) Criminal sexual conduct in the second degree, under § 39-3704 [repealed];

(ix) Criminal sexual conduct in the third degree, under § 39-3705 [repealed];

(x) Kidnapping where the victim is a minor, under § 39-2-303 [repealed], except when committed by a parent of the minor;

(xi) Solicitation, under § 39-1-401 [repealed] or § 39-118(b) [repealed], to commit any of the offenses enumerated in this subdivision (20)(B);

(xii) Attempt, under § 39-1-501 [repealed], § 39-605 [repealed], or § 39-606 [repealed], to commit any of the offenses enumerated in this subdivision (20)(B);

(xiii) Conspiracy, under § 39-1-601 [repealed] or § 39-1104 [repealed], to commit any of the offenses enumerated in this subdivision (20)(B); or

- (xiv) Accessory before or after the fact, or aider and abettor, under title 39, chapter 1, part 3 [repealed], to any of the offenses enumerated in this subdivision (20)(B);
- (21) “Social media” means web sites and other online means of communication that are usually used by large groups of people to share information, to develop social and professional contacts, and that customarily require an identifying password and user identification to participate;
- (22) “SOR” means the TBI's centralized record system of offender registration, verification and tracking information;
- (23) “Student” means a person who is enrolled on a full-time or part-time basis in any public or private educational institution, including any secondary school, trade or professional institution or institution of higher learning;
- (24) “TBI” means the Tennessee bureau of investigation;
- (25) “TBI registration form” means the Tennessee sexual offender registration, verification and tracking form;
- (26) “TDOC” means the Tennessee department of correction;
- (27) “TIES” means the Tennessee information enforcement system;
- (28)(A) “Violent juvenile sexual offender” means a person who is adjudicated delinquent in this state for any act that constitutes a violent juvenile sexual offense; provided, that the person is at least fourteen (14) years of age but less than eighteen (18) years of age at the time the act is committed;
- (B) Upon an adjudication of delinquency in this state for an act that constitutes a violent juvenile sexual offense, the violent juvenile sexual offender shall also be considered a violent sexual offender under this part, unless otherwise set out in this part;
- (29)(A) “Violent juvenile sexual offense” means an adjudication of delinquency, for any act committed on or after July 1, 2011, that, if committed by an adult, constitutes the criminal offense of:
- (i) Aggravated rape, under [§ 39-13-502](#);
 - (ii) Rape, under [§ 39-13-503](#);
 - (iii) Rape of a child, under [§ 39-13-522](#), provided the victim is at least four (4) years younger than the offender;
 - (iv) Aggravated rape of a child, under [§ 39-13-531](#); or

- (v) Criminal attempt, under § 39-12-101, to commit any of the offenses enumerated in this subdivision (28)(A);
- (B) “Violent juvenile sexual offense” also means an adjudication of delinquency, for any act committed on or after July 1, 2014, that, if committed by an adult, constitutes the criminal offense of:
 - (i) Aggravated sexual battery, under § 39-13-504;
 - (ii) Criminal attempt, under § 39-12-101, to commit any of the offenses enumerated in this subdivision (28)(B);
- (30) “Violent sexual offender” means a person who has been convicted in this state of committing a violent sexual offense or has another qualifying conviction;
- (31) “Violent sexual offense” means the commission of any act that constitutes the criminal offense of:
 - (A) Aggravated rape, under § 39-2-603 [repealed] or § 39-13-502;
 - (B) Rape, under § 39-2-604 [repealed] or § 39-13-503;
 - (C) Aggravated sexual battery, under § 39-2-606 [repealed] or § 39-13-504;
 - (D) Rape of a child, under § 39-13-522;
 - (E) Attempt to commit rape, under § 39-2-608 [repealed];
 - (F) Aggravated sexual exploitation of a minor, under § 39-17-1004;
 - (G) Especially aggravated sexual exploitation of a minor under § 39-17-1005;
 - (H) Aggravated kidnapping where the victim is a minor, under § 39-13-304, except when committed by a parent of the minor;
 - (I) Especially aggravated kidnapping where the victim is a minor, under § 39-13-305, except when committed by a parent of the minor;
 - (J) Sexual battery by an authority figure, under § 39-13-527;
 - (K) Solicitation of a minor, under § 39-13-528 when the offense is classified as a Class B or Class C felony;

- (L) Spousal rape, under § 39-13-507(b)(1) [repealed];
 - (M) Aggravated spousal rape, under § 39-13-507(c)(1) [repealed];
 - (N) Criminal exposure to HIV, under § 39-13-109(a)(1);
 - (O) Statutory rape by an authority figure, under § 39-13-532;
 - (P) Criminal attempt, under § 39-12-101, § 39-12-501 [repealed], § 39-605 [repealed], or § 39-606 [repealed], to commit any of the offenses enumerated in this subdivision (31);
 - (Q) Solicitation, under § 39-12-102, to commit any of the offenses enumerated in this subdivision (31);
 - (R) Conspiracy, under § 39-12-103, to commit any of the offenses enumerated in this subdivision (31);
 - (S) Criminal responsibility, under § 39-11-402(2), to commit any of the offenses enumerated in this subdivision (31);
 - (T) Facilitating the commission, under § 39-11-403, to commit any of the offenses enumerated in this subdivision (31);
 - (U) Being an accessory after the fact, under § 39-11-411, to commit any of the offenses enumerated in this subdivision (31);
 - (V) Incest, under § 39-15-302;
 - (W) Aggravated rape of a child under § 39-13-531;
 - (X) Aggravated prostitution, under § 39-13-516; provided, that the offense occurs on or after July 1, 2010;
 - (Y) Trafficking for a commercial sex act, under § 39-13-309;
 - (Z) Promotion of prostitution, under § 39-13-515, where the person has a prior conviction for promotion of prostitution; or
 - (AA) Continuous sexual abuse of a child, under § 39-13-518; and
- (32) “Within forty-eight (48) hours” means a continuous forty-eight-hour period, not including Saturdays, Sundays or federal or state holidays.

Credits

2004 Pub.Acts, c. 921, § 1; 2005 Pub.Acts, c. 316, § 1; 2006 Pub.Acts, c. 890, §§ 6-9; 2007 Pub.Acts, c. 262, §§ 1, 2, eff. May 30, 2007; 2007 Pub.Acts, c. 465, §§ 1, 4; 2007 Pub.Acts, c. 594, § 6, eff. June 28, 2007; 2008 Pub.Acts, c. 714, § 1, eff. July 1, 2008; 2008 Pub.Acts, c. 1164, § 2, eff. July 1, 2008; 2010 Pub.Acts, c. 1138, §§ 1 to 5, eff. July 1, 2010; 2011 Pub.Acts, c. 483, §§ 5 to 9, eff. July 1, 2011; 2012 Pub.Acts, c. 727, §§ 47, 60, eff. July 1, 2012; 2012 Pub.Acts, c. 753, §§ 1, 2, eff. July 1, 2012; 2012 Pub.Acts, c. 883, § 2, eff. July 1, 2012; 2012 Pub.Acts, c. 1075, § 4, eff. July 1, 2012; 2014 Pub.Acts, c. 722, § 1, eff. July 1, 2014; 2014 Pub.Acts, c. 729, § 1, eff. July 1, 2014; 2014 Pub.Acts, c. 744, § 1, eff. April 21, 2014; 2014 Pub.Acts, c. 770, §§ 1, 5, 6, eff. July 1, 2014; 2014 Pub.Acts, c. 977, § 3, eff. July 1, 2014; 2015 Pub.Acts, c. 284, § 1, eff. July 1, 2015; 2015 Pub.Acts, c. 316, § 1, eff. April 28, 2015; 2015 Pub.Acts, c. 516, § 6, eff. July 1, 2015; 2016 Pub.Acts, c. 941, § 2, eff. July 1, 2016; 2018 Pub.Acts, c. 719, § 1, eff. July 1, 2018; 2019 Pub.Acts, c. 437, § 2, eff. May 22, 2019.

Notes of Decisions (4)

T. C. A. § 40-39-202, TN ST § 40-39-202

Current with laws from the 2019 First Reg. Sess. of the 111th Tennessee General Assembly, eff. through July 7, 2019. Pursuant to §§ 1-1-110, 1-1-111, and 1-2-114, the Tennessee Code Commission certifies the final, official version of the Tennessee Code and, until then, may make editorial changes to the statutes. References to the updates made by the most recent legislative session should be to the Public Chapter and not to the T.C.A. until final revisions have been made to the text, numbering, and hierarchical headings on Westlaw to conform to the official text.

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